



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

**DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224**

Date: JUL 15 2008

Number: 200841038

Release Date: 10/10/2008

UIL Number: 521.01-00

EO

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 521. Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933.

The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date:

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

M = Applicant
N = State
O = Date
P = Large saltwater lake
Q = Percentage
R = State registration certificate

U.I.L. Number

521.01-00

Dear :

We have considered your application for recognition of exemption from Federal income tax under section 521 of the Internal Revenue Code. Based on the information provided, we have concluded that you do not qualify for exemption under section 521. The basis for our conclusion is set forth below.

Issue:

1. Does the organization (hereinafter, "M") meet the requirements for exemption under section 521 of the Code as a farmers' cooperative?

Facts:

M was incorporated under the provisions of the non-profit cooperative code in the state of N on O date. Article III, Section 1 of M's Articles of Incorporation state the following purposes:

The purposes of this Cooperative shall be to receive, harvest, handle, process, and market brine shrimp cysts and other products of its members and other purposes engaged in the fishery industry; to purchase, handle, and distribute supplies and equipment to its members and other patrons; to perform any and all related services for its members and other patrons; and to engage in any other lawful purpose. This Cooperative shall be operated on a cooperative basis for

the mutual benefit of its members and patrons.

Article IV of M's Articles state: "for the purposes of these Articles, the holders of Certificates of Registration (COR's) for the harvest of Artemia cysts from the P are considered persons engaged in the fishery industry."

Article I, Section 1, Subsection (f) of M's bylaws states that one of the requirements for membership in M is the "holding one or more Certificates of Registration (COR) to harvest artemia cysts from the (P)."

In M's Form 1028 application, Part III, item 12, it states that the activity in which M will engage is "Harvesting, processing and marketing (of) brine shrimp eggs."

Law:

Section 521(a) of the Code provides, in part, that a farmers' cooperative organization described in section 521(b)(1) of the Code shall be exempt from taxation under Subtitle A, except as otherwise provided in Article 1 of subchapter T of the Code.

Section 521(b)(1) of the Code states that the type of farmers' cooperative exempt from taxation

are farmers, fruit growers, or like associations organized and operated on a cooperative basis (A) for the purpose of marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them, or (B) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses.

Section 464(e)(1) of the Code defines the term "farming" as "...the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity including the raising, shearing, feeding, caring for, training, and management of animals. For purposes of the preceding sentence, trees (other than trees bearing fruit or nuts) shall not be treated as an agricultural or horticultural commodity."

Section 1.521-1(a)(1) of the Income Tax Regulations states that a cooperative association "...engaged in the marketing of farm products for farmers, fruit growers, livestock growers, dairymen, etc., and turning back to producers the proceeds of the sales of their products, less the necessary operating expenses, on the basis of either the quantity or the value of the products furnished by them, are exempt, from income tax..."

Section 1.521-1(b) of the Regulations states that "Cooperative associations engaged in the purchasing of supplies and equipment for farmers, fruit growers, livestock growers, dairymen, etc. and turning over such supplies and equipment to them at actual cost, plus necessary operating expenses are exempt (from income tax)."

Section 1.521-1(d) of the Regulations provides that cooperative organizations engaged in occupations dissimilar from those of farmers, fruit grower, and the like are not exempt.

Section 1.175-3 of the Regulations states that term "farm" is to be "...used in its ordinary, accepted sense and includes stock, dairy, poultry, fish, fruit and truck farms, and also plantations, ranches, ranges, and orchards. A fish farm is an area where fish are grown or raised, as opposed to merely caught or harvested."

In Sunset Scavenger Company, Inc. v. Commissioner, 84 F.2d 453 (9th Cir. 1936), the Commissioner determined the petitioner was not exempt from § 103 of the Code (which was a predecessor to section 521 of the Internal Revenue Code of 1986). The court agreed, saying in part,

We believe, as the Commissioner contends, that under the principle of ejusdem generis, the words "like associations" are limited by the words "farmers" and "fruit growers" and as thus limited mean only such associations as market agricultural products, or purchase supplies and equipment for those who are engaged in producing agricultural products. See *Garden Homes Co. v. Commissioner* (C.C.A. 7) 64 F.(2d) 593. Under such construction, petitioner is not one of the associations exempt from taxation.

In Revenue Ruling 55-611, 1955-2 C.B. 270, the Service held that an association which purchases supplies and equipment for its members who are fishermen is not an association of farmers or fruit growers or a like association within the meaning of section 521(b)(1) of the Internal Revenue Code because it was not a like association. The association had contended that under state law, "agricultural products" included fish and salt water sea food and that state law had recognized it as an agricultural association. The Service stated that the provisions of any state law are not controlling in determining status for Federal income tax purposes and cited *Munro L. Lyeth v Hoey*, 305 U.S. 188 in support of its contention.

In Revenue Ruling 64-246, 1964-2 C.B. 154, an organization was engaged in the business of harvesting, processing, buying, selling, storing, and otherwise handling fish and fish products for its members and other patrons. Its membership was restricted to persons engaged in the production of agricultural commodities, including fish of commercial value produced in privately-owned waters. The Service held that because

the association was engaged in cooperatively marketing fish in privately-owned waters, it was considered to be an organization composed of producers of "farm-raised fish" which are, in other words, farm products. The Service held that the organization was exempt under section 521 as a farmers' cooperative.

Application of law:

We consider M's activities of harvesting, processing and marketing of brine shrimp as not being engaged in a farming activity. Section 464(e)(1) of the Code does not include in the definition of farming the harvesting of brine shrimp. Per section 1.521-1(d) of the Regulations, cooperative organizations engaged in occupations dissimilar from those of farmers, fruit grower and the like are not exempt under section 521 of the Code. Per section 1.175-3 of the Regulations, a fish farm is an area where fish are grown or raised as opposed to merely caught or harvested.

M is not similar to the organization described in Rev. Rul. 64-246 because the organization in that ruling raised fish in privately-owned waters whereas M harvests, processes and markets brine shrimp from the P, which is not privately owned by M. Therefore, M is not engaged in a farming activity and cannot be considered a "like association" under section 521 of the Code.

Applicant's Position:

In M's letter dated December 4, 2007, it stated, among other things, that the members of M do not have their own private fish/shrimp farms. The letter also states that "Brine shrimp are used as food for other fish producers...when the brine shrimp are processed, the brine shrimp are marketed to fish producers (i.e., not markets or restaurants)."

M's letter of February 8, 2008 requested a formal denial letter from the Service. M states that

...the harvesting of brine shrimp cysts from the (P) is regulated by the State of N. Members of the Cooperative hold approximately Q percent of the R issued by the State of N with respect to harvesting brine shrimp from the lake. In many respects the harvesting of brine shrimp cysts by the Cooperative from the (P) is similar to harvesting fish from a private fish/farm facility.

Government's Position:

M states that the harvesting of brine shrimp cysts is regulated by the State of N. As stated in *Munro L. Lyeth v. Hoey*, the provisions of any state law are not controlling in determining status for Federal income taxes. M also states that the harvesting of brine shrimp cysts is similar to harvesting fish from a private fish/farm facility. However, section 1.175-3 of the Regulations states a fish farm is an area where fish are grown or raised, as opposed to merely caught or harvested (emphasis added). In Rev. Rul. 64-246, the Service emphasized that fish and fish products could be considered as farm products if raised in privately-owned waters, which differs from M in that it harvests brine shrimp cysts in a publicly-owned salt water lake.

Based on section 464(e)(1) of the Code and section 1.175-3 of the Regulations, the Service contends the harvesting of brine shrimp cysts is not a farming activity. Section 1.521-1(d) of the Regulations states that cooperative associations engaged in occupations dissimilar from those of farmers, fruit grower and the like are not exempt under section 521 of the Code. Since M is not a "like association," it cannot be described as a farmers' cooperative under section 521(b)(1) of the Code.

Conclusion:

Based on the information submitted, it is the position of the Internal Revenue Service that you do not qualify for exemption under section 521 as a farmers' cooperative.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter.

We will consider your statement and decide if that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. To be represented during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter to you. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure